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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,192	11/14/2003	Cosmin Dini	50325-0827	9354
29989 7590 01/22/2009 HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110				
EXAMINER				
OSMAN, RAMY M				
ART UNIT		PAPER NUMBER		
2457				
MAIL DATE		DELIVERY MODE		
01/22/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/7 14,192

Applicant(s)

DINI ET AL.

Examiner

RAMY M. OSMAN

Art Unit

2457

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-24 and 26-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51-54 is/are allowed.
- 6) ☒ Claim(s) 1-24,36,43 and 44 is/are rejected.
- 7) ☒ Claim(s) 26-29,36-42 and 45-50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/26/08, 10/8/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is responsive to amendment filed on 11/5/08. Claims 1,3-24,26-54 are pending.

Response to Arguments

2. Applicant's arguments, filed 9/19/08, with respect to the rejection(s) have been fully considered but are not persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

Claim Rejections - 35 USC § 101

3. Claims 1-23 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These are all method claim which are neither tied to another statutory class (thus not establishing a hardware element to the claim), nor performs an underlying transformation of subject matter into a different state or thing (thus not enabling a useful, concrete and tangible result).

While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The method claims include steps broad enough wherein

the claim could be completely performed mentally, verbally or without a machine, nor is any transformation apparent. (see also MPEP Section 2106.IV.B and 2106.IV.C)

Applicants have previously included a “memory” limitation in an attempt to overcome this rejection. However, the “memory” is not tied to any of the steps which are critical to the inventive activities. One way to correct this is include a microprocessor (or other specification-enabled language) which performs the “determining” step(s).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,24,36,43,44 rejected under 35 U.S.C. 103(a) as being unpatentable over Puranik et al (US Patent No 6,003,090).

6. In reference to claim 1, Puranik teaches a method of measuring the availability of a network element or service, the method comprising the computer-implemented steps of:

determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value (column 7 lines 7-15 & 23-37); and

storing, in memory, the second availability value (column 7 lines 54-58);

wherein determining the second availability value further comprises: determining a dividend based on the first availability value, the first time value, the second time value, and the

first operational state value; and dividing the dividend by the second time value; wherein the first availability value indicates the availability of the network or service at the first time value; wherein the second availability value indicates the availability of the network or service at the second time value; and wherein the first time value indicates a first time that is earlier than a second time indicated by the second time value (column 7 lines 7-15).

Puranik fails to explicitly teach determining first and second availability of a single network element. However, Puranik does teach determining first and second availability of a single network based upon the components (devices) of that network. In this regard, if the whole network is broadly looked upon as a “single element”, then indeed Puranik does teach determining first and second availability of a single element.

In light of this, a single network device is made up of multiple components. If the components' availabilities are determined in accordance with the teachings of Puranik then it can be said that a single network device can have availability of its first and second components determined. It therefore would have been obvious to one of ordinary skill in the art to determine first and second availability of the same single device for the purpose of enabling device monitoring instead of whole network monitoring.

7. In reference to claims 24,36,43,44, these claims that correspond to the method claim of claim 1. Therefore, these claims are rejected based upon the same rationale as given for claim 1 above.

Allowable Subject Matter

8. Claims 51-54 allowed.

9. Claims 13,20 would be allowable if the 101 rejection is overcome.

10. Claims 3-6, 14-19, 26-29, 36-42,45-50 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, into all independent claims, including all of the limitations of the base claim and any intervening claims.
11. For reasons for the indication of allowable subject matter see Office Action dated 9/10/2007.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.